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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 DANIEL CASTRO,
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14 v.
15 SCOTT KERNAN, Secretary,
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Petitioner,
Respondent.

Case No.: 16cv2314-MMA (KSC)

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE;**

[Doc. No. 22]

**DENYING PETITION FOR WRIT
OF HABEAS CORPUS; AND**

[Doc. No. 1]

**DECLINING TO ISSUE
CERTIFICATE OF
APPEALABILITY**

Petitioner Daniel Castro has filed a Petition for Writ of Habeas Corpus (“petition”) pursuant to 28 U.S.C. § 2254, challenging his conviction for driving with a blood alcohol level (“BAC”) of 0.08 percent or more and causing injury, pursuant to Cal. Vehicle Code § 23153(b). Doc. No. 1. Specifically, Petitioner claims his Fourth Amendment right was violated when “blood was taken and tested” without a warrant and that the trial court should have granted his motion to suppress evidence of his blood sample. *Id.* at 6.

Respondent answered on the merits, requesting the petition be denied. Doc. No. 5. Petitioner did not file a traverse. *See* Docket.

The matter was referred to United States Magistrate Judge Karen S. Crawford for preparation of a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1), and Civil Local Rule HC.2. Judge Crawford has issued a thorough and well-reasoned Report recommending that the Court deny Petitioner's claim for relief and dismiss the petition. *See* Doc. No. 22.

Pursuant to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), the Court must "make a de novo determination of those portions of the report . . . to which objection is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge]." 28 U.S.C. § 636(b)(1); *see also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). Objections to the Report and Recommendation were due no later than November 17, 2017. Doc. No. 22 at 7. To date, no objections have been filed.¹ *See* Docket.

Accordingly, the Court concludes that Judge Crawford has issued an accurate report and well-reasoned recommendation. The Court **ADOPTS** the Report and Recommendation in its entirety and **DENIES** Petitioner's petition with prejudice.

CERTIFICATE OF APPEALABILITY

Rule 11 of the Federal Rules Governing Section 2254 Cases states that "the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." A certificate of appealability is not issued unless there is "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Under this standard, "a petitioner must 'show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.'"

¹ The Clerk of Court served Petitioner with a copy of the Report and Recommendation via U.S. Mail on October 18, 2017. *See* Doc. No. 22.

1 *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quoting *Slack v. McDaniel*, 529 U.S.
2 473, 484 (2000) (internal quotation marks omitted)). For the reasons set forth in the
3 Report and Recommendation and incorporated herein, the Court finds that this standard
4 has not been met and therefore **DECLINES** to issue a certificate of appealability in this
5 case.

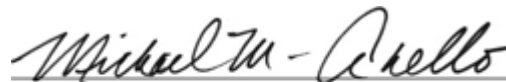
6 **CONCLUSION**

7 Based on the foregoing, the Court **ADOPTS** the Report and Recommendation in
8 its entirety and **DENIES** Petitioner's petition with prejudice. The Court further
9 **DECLINES** to issue a certificate of appealability.

10 The Clerk of Court is instructed to enter judgment accordingly and close this case.

11 **IT IS SO ORDERED.**

12 Dated: December 15, 2017



Hon. Michael M. Anello
United States District Judge